

INTRADEPARTMENTAL CORRESPONDENCE

May 27, 2020  
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TO: The Honorable Board of Police Commissioners

FROM: Chief of Police

SUBJECT: LAW ENFORCEMENT RELATED INJURY NO. 036-19

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Honorable Members:

The following is my review, analysis and findings for Law Enforcement Related Injury (LERI), Force Investigation Division (FID) No. 036-19. A Use of Force Review Board (UOFRB) was convened on this matter on April 27, 2020. In this case, the recommended findings were not unanimous, with a minority opinion rendered regarding the Tactics findings for Officers A. Garcia, Serial No. 38133, and D. Cunningham, Serial No. 43884, Newton Patrol Division.

I have carefully weighed each opinion, considered the case in its entirety and have adopted the recommendations of the UOFRB minority opinion with regard to the Tactics findings for Officer Garcia and the UOFRB majority opinion with regard to the Tactics findings for Officer Cunningham. I hereby submit my findings in accordance with Police Commission policy.

**SUMMARY**<sup>1</sup>

On July 31, 2019, at approximately 0902 hours, Officers Garcia and Cunningham were in full police uniform driving a marked black and white police vehicle. At the time of the incident Officer Cunningham was a probationary officer with approximately one month in the field. Officer Garcia had been an FTO for approximately seven months and was Officer Cunningham's assigned Field Training Officer (FTO).<sup>2</sup>

According to Officer Garcia, both he and Officer Cunningham had predetermined that Officer Garcia would assume the role of contact officer while Officer Cunningham would be responsible for the deployment of less-lethal devices (**Additional Tactical Debrief Topics - Required Equipment**).

**Note:** The FID investigation revealed that officers discussed tactical situations which included their designated roles and assignments at the start of watch. During this incident, the officers switched between the roles of contact and cover. The FID interview revealed that

<sup>1</sup> The summary and the investigation completed by FID for this incident have been provided to the Board of Police Commissioners.

<sup>2</sup> Officer Garcia was five feet, six inches tall, 145 pounds, 40 years of age. Officer Cunningham was five feet, 10 inches tall, 175 pounds, 27 years of age.

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both officers believed they were the designated as the lethal officer during the incident (Debriefing Point No. 1).

At approximately 0902 hours, Communications Division (CD) broadcast the following radio call, "415 man assaulting a woman, 254 West Slauson Avenue. Inside the Mobile Gas Station Store. Suspect male, Black, stand by for additional. Code Three." Officers Garcia and Cunningham responded to the call Code-Three.<sup>3</sup> At approximately 0904 hours, while Officers Garcia and Cunningham were enroute to the radio call, CD broadcast the following additional information, "The suspect and victim are now in the middle of the street fighting. Suspect male Black, no shirt, wearing blue jeans assaulting a female Black."

According to a review of Body Worn Video (BWV) by FID investigators, while enroute to the call, Officer Garcia's BWV captured him advising Officer Cunningham that in the event they saw the suspect, they would immediately detain him; however, no other tactical planning was discussed (Debriefing Point No. 2).

The FID investigation revealed that, the male and female referenced in the 911 call were later identified as Angela M. and R. Mullen.<sup>4</sup> Angela M. and Mullen<sup>5</sup> entered the same convenience store of the Mobil gas station located at 254 West Slauson Avenue, in an agitated state. Prior to entering the convenience store, Angela M. and Mullen were engaged in a verbal argument regarding being turned away from a homeless shelter due to Mullen's refusal to take his medication. The argument caused Angela M. to become fearful of Mullen wherein, she attempted to flee by running inside the convenience store. Angela M.'s attempt to flee was futile as Mullen followed her inside the convenience store where he assaulted her and took her cellular phone. After Mullen assaulted Angela M., he attempted to leave the convenience store with her cellular phone. Angela M. grabbed Mullen by his shirt; however, Mullen was able to struggle out of his shirt and run out and away from the convenience store shirtless. Mullen fled westbound from the convenience store on West Slauson Avenue while Angela M. ran after him. Angela M. was able to catch Mullen where they continued to fight in the roadway of West Slauson Avenue. Mullen then fled that location and ran into the parking lot of So-Cal Tires & Wheels located at 5826 South Olive Street, where he ran into a storage room located on the exterior of the business.

According to Officer Garcia, upon their arrival at the intersection of Broadway and Slauson Avenue, he observed Angela M. *who was flagging and waving at them. Angela M. was standing in the southwest parking lot of Broadway and Slauson Avenue near the east driveway of the So-Cal Tires & Wheels business. As Officers Garcia and Cunningham drove up to Angela M., she advised the officers that Mullen took off running westbound through the parking lot adjacent to the So-Cal Tires & Wheels business. Officer Garcia then drove his police vehicle into the parking lot on the east side of the So-Cal Tires & Wheels business where he observed a parked*

<sup>3</sup> Code-Three refers to emergency response driving.

<sup>4</sup> Angela M. and Mullen have been involved in a dating relationship for approximately one year and were married for 30 days prior to the date of the incident. They had no children in common. The identity of domestic violence victims is kept confidential; therefore, the victim in this incident will be referred to as "Angela M." in this report.

<sup>5</sup> According to the FID investigation, Mullen was a male, Black, 6' tall, 190 pounds, 52 years of age.

cargo type truck. Upon exiting their police vehicle, Officer Garcia observed a male, later identified as, E. Molina, an employee of the So-Cal Tires & Wheels business, standing in the parking lot and pointing towards *the northeast corner of the business where there was a U-Haul type truck parked*. Officers Garcia and Cunningham proceeded to the area and conducted a search for Mullen **(Debriefing Point No. 3)**.

According to Officer Cunningham, upon their arrival he broadcast that they were Code-Six and observed Angela M. *flagging them down* as she was *in the location* of the radio call and advised the officers that, "He's over there, he's over there," and pointed to the So-Cal Tires & Wheels business. Officer Cunningham stated, "That made us believe that she was probably the victim of the crime."<sup>6</sup>

The FID investigation revealed that Officers Garcia and Cunningham did not update CD of their new location at 5826 South Olive Street, nor obtained any additional information from Angela M. or E. Molina before they initiated their search. Officers Garcia and Cunningham drove to the area where Angela M. pointed, exited their police vehicle wherein they initiated their search in the northeast corner of the parking lot and around the U-Haul type truck **(Debriefing Point No. 4)**.

According to Officer Garcia, he drew his service pistol to a one-hand low ready position because he did not *know what type of individual* he was *dealing with*, and *when officers clear a corner or any type of residence or location*, officers *always want to unholster just in case there's [sic] any type of any threat of danger*. Garcia stood behind a parked sedan to visually clear an area next to a cargo type truck that was parked in the east corner of the lot. Once the area to the east of the parked truck was visually cleared, Officer Garcia walked to the west side of the truck to continue clearing the corner of the lot. While transitioning around the cargo type truck, Officer Garcia observed that Angela M. *had followed them to that same location*. Officer Garcia advised her, "Hey, don't leave. I need you to stay here" **(Drawing/Exhibiting)**.

According to Officer Cunningham, he drew his service pistol to a two-hand low ready *because the comments of the radio call*. Officer Cunningham stated, "He was a man who assaulted a woman, and we didn't know if that was with weapons. That wasn't really described. And then the area, we didn't know if in that area there were any weapons that he was hiding." Officer Cunningham, followed by Officer Garcia, walked towards a closed yellow door on the east side of the building in the area where they were searching **(Drawing/Exhibiting)**.

According to Officer Garcia, he was unsure if Mullen was hiding and therefore directed Officer Cunningham to call Mullen out of hiding. Not knowing where Mullen was, Officer Cunningham's BWV captured him state, "Hey come out. Come out with your hands up where we can see them. Come out right now." According to Officer Garcia, there was no response to these commands.

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<sup>6</sup> Code-Six refers to being at scene.

A review of BWV by FID investigators revealed that Officers Garcia and Cunningham partially searched the southeast corner of the So-Cal Tires & Wheels parking lot and did not locate Mullen. Subsequently, Officer Cunningham holstered his pistol and almost instantaneously after Officer Cunningham holstered his service pistol, Officer Garcia directed Officer Cunningham to clear the corner of the parking lot behind the cargo type truck. Officer Cunningham once again drew his service pistol. However, before bypassing the closed yellow door to complete the search in the corner of the parking lot, Officer Garcia directed Officer Cunningham to check what was behind the closed yellow door. Officer Cunningham approached the closed yellow door as Officer Garcia stood behind him. While holding his service pistol in his right hand, Officer Cunningham pushed the door open with his left hand, exposing Mullen, who was seated on the ground with his legs pointed south and his feet crossed, attempting to hide from the officers (**Drawing/ Exhibiting – Cunningham’s Second Occurrence and Additional Tactical Debriefing Topics – Basic Firearm Safety and Holstering Service Pistol**).

A review of Officer Cunningham’s BWV by FID investigators captured Officer Cunningham direct Mullen to, “Come out here ... Stand up. Stand up. Face away from me. Show me your hands!” Officer Garcia holstered his service pistol and left the cover provided by Officer Cunningham. Officer Garcia approached Mullen by stepping to the left of Officer Cunningham and into the open. Officer Garcia stood approximately ten feet from the doorway. Officer Garcia’s BWV captured him order Mullen to, “Get out here ... come here ... stay down.” Officer Garcia directed Officer Cunningham to holster his service pistol, which he did (**Additional Tactical Debriefing Topics – Simultaneous Conflicting Commands and Cover and Concealment**).

According to Officer Garcia, when the door to the storage room was opened, he observed Mullen seated on the ground attempting to hide from officers. After being given directions to come out of the storage room, Mullen laid in the threshold of the doorway on his back with his legs stretched out inside of the room while his head, torso, and arms, were extended outside of the room. Officer Garcia used both of his hands to grab Mullen’s left wrist. Officers then pulled Mullen until his legs were entirely out of the storage area and attempted to detain Mullen (**Non-Lethal Use of Force**).

The surveillance video from So-Cal Tires & Wheels obtained by FID investigators depicted the ensuing Non-Lethal Use of Force actions, the subsequent search and the lifting of Mullen off the ground by Officers Garcia and Cunningham. Investigators from FID determined Officer Garcia’s actions were as follows: Once Mullen was moved from the doorway by both officers, Officer Garcia used both of his hands on Mullen’s left wrist and attempted to roll Mullen toward his left side as Mullen resisted in an effort to place him on his stomach, Mullen was placed facedown. Officer Garcia then gripped Mullen’s right arm, near the wrist and Officer Garcia positioned himself on Mullen’s right side as Mullen appeared to bend his arm toward his head. Officer Garcia also placed his left knee on the center of Mullen’s back, as Officer Garcia applied body weight while attempting to hold onto Mullen’s right wrist with both hands. Mullen resisted which resulted in Officer Garcia losing his grip of Mullen’s wrist allowing Mullen to roll over. Officer Garcia then applied bodyweight with the left side of his upper torso and laid across



Mullen's upper chest. While laying across Mullen, Officer Garcia broadcast a backup request **(Non-Lethal Use of Force)**.

According to the FID investigation, Officer Garcia, after requesting a backup, placed his hand-held radio down on the ground and switched his hand position as he re-gripped Mullen's right wrist with his left hand, pinning it in a bent position near Mullen's head. Officer Garcia then placed his left knee on Mullen's upper back area and applied bodyweight. Officer Garcia straightened Mullen's right arm by using both his hands to pull Mullen's right wrist toward his back. Simultaneously, Officer Garcia placed his right hand on the back of Mullen's right triceps and placed his right knee on the back of Mullen's right shoulder, applying bodyweight causing Mullen to lay face down on the ground. Mullen continued to actively resist, and Officer Garcia struck Mullen once in the upper back with a closed fist as a distraction. Officer Garcia then placed his right forearm between Mullen's shoulder blades and neck, while using bodyweight to control Mullen **(Non-Lethal Use of Force)**.

According to the FID investigation, Officer Cunningham's actions in conjunction with Officer Garcia's actions were as follows: Officer Cunningham moved to Mullen's right side, using his left hand to grip Mullen's right wrist and his right hand to hold onto Mullen's right elbow while pulling Mullen until his legs were entirely out of the storage room. When Mullen was out of the storage room, Officer Cunningham grabbed Mullen's left bicep/triceps to roll Mullen over onto his stomach where Mullen tensed up. Officers Cunningham and Garcia positioned Mullen into the prone position. Mullen bent his left arm and placed it close to his upper body. Officer Cunningham attempted to pull Mullen's left arm out as Officer Cunningham placed his right knee on Mullen's back and applied bodyweight. Officer Cunningham placed his right hand on Mullen's left triceps and used his left hand to grab Mullen's left wrist. Officer Cunningham continued to hold onto Mullen's left wrist with his left hand and was able to pin Mullen's arm down across Mullen's chest while Officer Garcia requested a backup. Officer Cunningham then repositioned himself to the right side of Mullen and released Mullen's wrist and used his right hand on Mullen's left elbow to begin pushing Mullen's elbow across his body, and grabbed Mullen's jeans near his left knee, to roll Mullen onto his stomach. Officer Cunningham placed his right hand on the back of Mullen's left shoulder and completed rolling Mullen face down on to his stomach **(Non-Lethal Use of Force)**.

According to the FID investigation, once Mullen was face down, Officer Cunningham placed his left knee on Mullen's lower back and applied bodyweight. Officer Cunningham struggled to control Mullen's left arm and Mullen was able to momentarily roll on to his right side, bending his left arm, pulling it in near his torso. Officer Cunningham was able to reacquire his grip on Mullen's left wrist and forearm while pulling it behind his back. Simultaneously, Officer Cunningham placed his right knee on Mullen's upper back and applied bodyweight. Officer Cunningham then applied a wrist lock to Mullen's left wrist, while removing his handcuffs with his right hand. When Officer Cunningham placed one handcuff on Mullen's left wrist, Mullen kicked his legs and was able to lift his chest partially off the ground. As Mullen was lifting his

torso off the ground, Officer Cunningham used his right hand to put bodyweight on Mullen's left shoulder, however, Mullen was still able to lift his head and torso slightly off the ground. As Mullen turned his head to the right toward Officer Garcia, Officer Cunningham placed his right hand on the back of Mullen's head and applied bodyweight. Officer Cunningham, then began to assist Officer Garcia in placing Mullen's right arm behind his back. Officer Cunningham used his right hand on Mullen's right forearm to assist with this motion. Mullen became rigid and tensed up his body as he tucked his right hand under his torso area. Officer Cunningham then handcuffed Mullen's right wrist and placed his right knee on middle of Mullen's back. Officers Garcia and Cunningham maintained bodyweight on Mullen until back-up units arrived (**Non-Lethal Use of Force**).

According to the FID investigation, Officers D. Liem, Serial No. 39506, M. Lassak, Serial No. 43859, J. Vogel, Serial No. 43873, J. Ornelas, No. 38704, N. Grant, Serial No. 42759, and J. Tualson, Serial No. 38660, Newton Patrol Division, responded to the backup request.

The surveillance video from So-Cal Tires & Wheels obtained by FID investigators also depicted in chronological order after the struggle with Mullen that as additional units arrived on scene Officer Garcia released his application of bodyweight and momentarily walked away from Mullen as Officer Cunningham conducted a pat down search of Mullen for weapons while Mullen laid in the prone position on the ground. At the conclusion of the search, Officer Cunningham placed his right hand on the back of Mullen's neck and rolled Mullen to a seated position with his legs stretched out in front of him. Officer Cunningham requested Mullen to stand up, but received no response. Officer Cunningham then placed his right hand under Mullen's left armpit and his left hand on Mullen's left bicep. Officer Lassak utilized both of his hands to grip Mullen's upper right arm. Officers Cunningham and Lassak lifted Mullen into a standing position with his torso bent forward. Officer Garcia observed Officers Cunningham and Lassak lift and attempt to carry Mullen. Officer Garcia assisted Officers Cunningham and Lassak as he used his right hand to push Mullen's upper chest into an upright position. He then applied firm grips to Mullen's upper arms to steady him. Officers Cunningham, Garcia, and Lassak were able to overcome Mullen's resistance and carried him to an awaiting police vehicle (**Non-Lethal Use of Force**).

According to Officer Garcia, he wanted to move Mullen to the police vehicle because, "I didn't want him on the ground anymore. I wanted to get him up off of the ground and inside to our black-and-white. I didn't want anymore -- another, or a second, possibly a second use of force to occur with him continuing to resist or not going on his own, so I wanted to just eliminate any potential further incident with the suspect."

The FID investigation revealed that Officers Garcia and Cunningham placed the first handcuff on Mullen one minute, two seconds after they initiated contact. The second handcuff was placed on Mullen 24 seconds later where Mullen was simultaneously rolled into the prone position and searched. Subsequently, Mullen was sat up one minute, 11 seconds later to place him into the police vehicle. The total time from Officers Garcia and Cunningham initial contact with Mullen to Mullen being placed into a recovery position was two minutes, and 34 seconds.

According to Officer Lassak, he observed that Mullen's upper body was under control, so he applied firm grips with both hands to Mullen's legs to overcome Mullen's resistance. Officer Lassak used both his hands to apply firm grips on Mullen's right arm and utilized physical force to raise Mullen into an upright position (**Non-Lethal Use of Force**).

Sergeant S. Tuialii, Serial No. 38343, Newton Patrol Division, arrived and assumed the role of Incident Commander (IC) and assessed the scene.

Officer Lassak was directed by Sergeant Tuialii to *pick up* Mullen off the ground and carry him to the police vehicle. Officer Garcia took hold of Mullen's right arm and Officer Lassak was redirected by Sergeant Tuialii to carry Mullen's legs. Officer Lassak released his grip on Mullen's arms and applied a firm grip to Mullen's legs. Officer Lassak assisted in carrying Mullen to the police vehicle where Mullen was placed in a seated position, inside of the police vehicle (**Non-Lethal Use of Force and Debriefing Point No. 5**).

A review of Officer Garcia's BWV by FID investigators captured Officer Garcia state, "Let's drag his ass" at approximately 09:09:43 hours (**Additional Tactical Debrief Topics - Use of Profanity**).

According to Sergeant Tuialii, he directed Officer Lassak to grab Mullen's legs. Officer Lassak lifted Mullen's legs and along with Officers Garcia and Cunningham, they carried Mullen over to the police vehicle.

According to the FID investigation, Sergeant Tuialii directed the officers to place Mullen on the ground and coordinated the officer's placement of Mullen into the back seat of the police vehicle. While placing Mullen in the back seat of the police vehicle, Officer Garcia reacquired a grip under Mullen's right armpit, while Officers Lassak and Cunningham used firm grips under his left armpit as they lifted Mullen to a standing position. The officers then placed Mullen in the back seat of the police vehicle on his right side. Officer Vogel reached in from the right rear passenger area of the police vehicle, grabbed underneath Mullen's armpits, and assisted in pulling Mullen across the rear seat, as Officer Cunningham gripped Mullen's jeans and pushed Mullen's legs into the police vehicle. Officer Vogel then lifted Mullen's shoulders to place Mullen into a seated position and secured him with the seatbelt.

**Note:** The FID investigation determined that no use of force occurred during the placement of Mullen into the police vehicle. Mullen did not resist the officers' physical efforts to place him into the police vehicle.

According to the FID investigation. Sergeant Tuialii and Officer Cunningham's BWVs captured Officer Garcia's left hand under Mullen's chin, for approximately one second, as he struggled to lift Mullen. According to Officer Garcia, he believed his left hand was on the back of Mullen's head and not his neck. He stated that his intent was to control Mullen's head while he reacquired his grip, to prevent Mullen from head butting him.

The FID investigation revealed Sergeant Tuialii was the first supervisor to arrive at the location. Sergeant Tuialii assumed the role of Incident Commander, however the incident was believed to be a Non-Categorical Use of Force at the time. Sergeant Tuialii directed officers to *pick up* Mullen and place him into a police vehicle and request an RA. The investigation revealed, Sergeant Tuialii initially believed he was a witnessing supervisor to the Non-Lethal Use of Force and requested an additional supervisor to the location to conduct the Non-Categorical Use of Force investigation. In response to Sergeant Tuialli's request, Sergeant Johnson, Serial No. 37298, Newton Patrol Division, responded and took over investigative responsibility for the Non-Lethal use of force investigation at scene. Further investigation by Sergeant Tuialii determined that he had arrived after the Non-Lethal Use of Force concluded and therefore took over the investigative responsibility from Sergeant Johnson for the Non-Categorical Use of Force investigation. The incident was initially handled by Sergeant Tuialii as a NCUOF investigation on July 31, 2019 (**Additional Tactical Debrief Topics - Non-Categorical Use of Force Investigation Protocols**).

Los Angeles Fire Department (LAFD) personnel responded to the scene at approximately 0915 hours, assessed Mullen's condition, and administered medical treatment. Subsequently, Mullen was transported to the University of Southern California Medical Center (USCMC) for further medical treatment via Rescue Ambulance (RA) 33.

Officers Garcia and Cunningham remained at scene and completed the investigation. Officer Garcia recovered and released Angela M.'s cellphone to her at scene. An Emergency Protective Order (EPO) was issued to Angela M. and the officers returned to Newton Community Police Station where they completed a Combined Crime and Arrest Report for Robbery. Officer Grant accompanied Mullen in the RA as Officer Tuason followed in their police vehicle.

**Note:** Prior to completing their arrest report, the officers viewed their BWVs of the incident. At the time of viewing, the incident was being investigated as a Non-Categorical Use of Force (NCUOF).

On August 1, 2019, at approximately 0300 hours, Mullen's treating physician, Doctor L. Hilson, USCMC, admitted Mullen into the hospital due to elevated blood levels caused by rhabdomyolysis.<sup>7</sup>

On August 1, 2019, Detective J. Goossen, Serial No. 26464, and Sergeant R. Brunson, Serial No. 32828, FID, met with Dr. D. Lee Johnson, USCMC, who advised that he, along with Doctor Hilson, could not rule out that Mullen's rhabdomyolysis was not related to the non-lethal use of force.

At approximately 1730 hours this investigation was re-classified to a Categorical Use of Force (CUOF).

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<sup>7</sup> Rhabdomyolysis is the breakdown of muscle tissue that leads to the release of muscle fiber (Myoglobin) contents into the blood. It is then filtered out of the body by the kidneys. Myoglobin breaks down into substances that can damage kidney cells.



At approximately 1800 hours, Officers Garcia and Cunningham were telephonically notified by Lieutenant E. Sun, Serial No. 30201, Newton Patrol Division, Watch Commander, and ordered not to discuss the incident until interviewed by FID personnel.

At approximately 1750 hours, the Department Operations Center (DOC) was notified of the LERI.

## **FINDINGS**

**Tactics** – Administrative Disapproval Garcia. Tactical Debrief, Sergeant Tuialii, along with Officers, Cunningham, Lassak, and Vogel.

**Drawing/Exhibiting** – In Policy, No Further Action, Officers Garcia and Cunningham.

**Non-Lethal Use of Force** – In Policy. No Further Action, Officers Garcia, Cunningham, and Lassak.

## **ANALYSIS**<sup>8</sup>

### **Detention**

Officers Garcia and Cunningham responded to a radio call of a “415 man assaulting a woman.” The suspect was described as a male, Black, wearing blue jeans and no shirt. As the officers neared the location of the radio call, Angela M. yelled and drew their attention, wherein she advised them that Mullen had fled to a nearby business. Angela M. pointed in the direction of the So-Cal Tires & Wheels business. Officers entered the property and were further directed by witness Molina who pointed toward the east side of the location. As officers searched for Mullen, officers opened a storage room door, which revealed Mullen inside, who matched the description of the suspect in the radio call. Officers gave Mullen verbal commands. Officers attempted to handcuff Mullen and detain him, at which time Mullen tensed his body and resisted officers which led to officers becoming involved in a Non-Lethal Use of Force. The officers’ actions were within Department policies and procedures.

### **Tactics**

Department policy relative to a Tactical Debrief is: *“The collective review of an incident to identify those areas where actions and decisions were effective and those areas where actions and decisions could have been improved. The intent of a Tactical Debrief is to enhance future performance.”*

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<sup>8</sup> The analysis reflects my recommendations as supported by the preponderance of the evidence established by the investigation.

The evaluation of tactics requires that consideration be given to the fact that officers are forced to make split-second decisions under very stressful and dynamic circumstances. Tactics are conceptual and intended to be flexible and incident specific, which requires that each incident be looked at objectively and the tactics be evaluated based on the totality of the circumstances.

### Tactical De-Escalation

*Tactical de-escalation involves the use of techniques to reduce the intensity of an encounter with a suspect and enable an officer to have additional options to gain voluntary compliance or mitigate the need to use a higher level of force while maintaining control of the situation.*

### Tactical De-Escalation Techniques

- *Planning*
- *Assessment*
- *Time*
- *Redeployment and/or Containment*
- *Other Resources*
- *Lines of Communication (Use of Force - Tactics Directive No. 16, October 2016, Tactical De-Escalation Techniques)*

Tactical de-escalation does not require that an officer compromise his or her safety or increase the risk of physical harm to the public. De-escalation techniques should only be used when it is safe and prudent to do so.

**Planning** – Officers Garcia and Cunningham were regular partners for approximately four weeks. During the time they worked together they frequently discussed tactics which included contact and cover roles as well as lethal and less-lethal force options. While enroute to the radio call, Officer Garcia advised Officer Cunningham that if they located Mullen, they would immediately detain him pending an investigation.

The officers planned for their initial response, specifically if they located Mullen. However, no additional planning was discussed while enroute and there was no planning for other possibilities such as designating a less-lethal cover officer in the event Mullen was uncooperative.

**Assessment** – While enroute to the location of the original radio call, Officers Garcia and Cunningham were provided with updated information which indicated Mullen and Angela M. had left the convenience store where the radio call was generated. Officers evaluated the new information and relied upon their observational skills to identify Angela M. and the location she directed them to. After contacting witness Molina, Officers Garcia and Cunningham assessed the information provided, and searched the last known area Mullen was observed. Officers located Mullen and assessed that he did not appear to be armed and was initially compliant with their commands. Officers made the determination to initiate physical contact and handcuff Mullen at which time he became aggressive and physically resisted the officers. Officers utilized

non-lethal force to overcome Mullen's resistance and requested additional resources to assist due to Mullen's continued aggression.

Officers assessed the information that was provided to them through CD, the individuals at scene, and Mullen's initial compliance with their direction. This incident was not a rapidly unfolding event and officers had time to obtain additional information from Angela M. and Molina to further assess and gather additional personnel to create a more detailed tactical plan. The officers would have benefitted from additional assessment of the incident by a more comprehensive interaction with Angela M. and Molina.

**Time** – As Officers Cunningham and Garcia approached the vicinity of their radio call location, Officer Garcia directed Officer Cunningham to place them Code-Six, which allowed officers the additional time to react to any potential threats they may encounter. When officers located Mullen in the small confined storage room, Officer Garcia immediately proceeded to execute the plan he had discussed with Officer Cunningham, which was to immediately take Mullen into custody, considering Mullen was initially cooperative. By doing so, Officer Garcia intended to reduce the time Mullen had to decide to flee or arm himself which could have presented a safety concern for the officers and community members.

Officers did not fully utilize the time while enroute to the radio call to develop and communicate a detailed plan or designate role assignments. However, Officers Garcia and Cunningham acted expeditiously in accordance with their prior communicated plan to detain Mullen as soon as practicable. The officers were afforded time to update their Code-Six location, garner additional information about Mullen from Angela M. and Molina, as well as request additional resources prior to the initiation of a search. However, they did not fully use that time which was available to them.

**Redeployment and/or Containment** – Officers Garcia and Cunningham located Mullen laying on the ground in a small confined storage room. Officers initially maintained their cover and line of sight of Mullen as he may have had the ability to arm himself with a weapon from the storage room and gain a tactical advantage, even though officers observed that Mullen did not have a weapon in his hands. Officers decided to initiate physical contact with Mullen, who was complying with their directions, and remove him from the storage room which they had not cleared. Officers did not fully utilize the cover at their disposal, nor have additional resources at scene to ensure containment was in place prior to engaging Mullen, as Mullen was already contained in his position which would have allowed the response of additional units to provide assistance to Officers Garcia and Cunningham.

**Other Resources** – Officers Garcia and Cunningham made the decision to initiate physical contact with Mullen, who was initially compliant, which resulted in a Non-Lethal Use of Force. Officers Garcia and Cunningham were not able to quickly overcome Mullen's physical resistance, resulting in Officer Garcia requesting additional resources to their location to assist with controlling Mullen. Even though Mullen did not initially demonstrate any physical

resistance, the officers lack of request for additional resources prior to their search resulted in no additional resources on scene and available to assist when needed.

**Lines of Communication** – While enroute to the scene of the radio call, Officer Garcia established a basic plan with Officer Cunningham which was to detain Mullen for an investigation as soon as they located him. Upon direction from Officer Garcia, Officer Cunningham placed themselves Code-Six, in order to communicate their location to both CD and additional resources. Officer Garcia maintained communication with Officer Cunningham when he informed Officer Cunningham his observation of Angela M. attempting to gain their attention and directed them to the area Mullen had fled. Officer Garcia continued to communicate with Officer Cunningham when he directed Officer Cunningham to holster his service pistol after observing Mullen's hands to be free of weapons, and prior to initiating physical contact with Mullen. Officer Garcia established communication with Mullen by providing him commands to get on the ground. Officer Garcia established communication with Officer Cunningham advising him to be mindful of Mullen's attempt to conceal his hands in the area of his waistband. Additionally, Officer Garcia maintained communication with CD and requested additional resources to assist with Mullen, who was physically resisting them.

During the review of the incident, the following Debriefing Topics were noted:

**Debriefing Point No. 1      Contact and Cover Roles**

*The cover officer's primary role is to protect the contact officer. This officer provides protection from a position of surveillance and control. This officer must continue to monitor the suspect's actions as well as any potential threats in the area (Los Angeles Police Department, Standardized Roll Call Training, Deployment Period 3/2005).*

*Officers must approach every contact with officer safety in mind. Complacency, overconfidence, poor planning, or inappropriate positioning can leave officers vulnerable to attack (California Commission on Peace Officer Standards and Training, Learning Domain 21).*

Prior to this incident, Officers Garcia and Cunningham had worked together for approximately four weeks. The officers routinely discussed tactical situations which included their designated roles and assignments. During this incident officers switched between the roles of contact and cover. The FID investigation revealed both officers believed they were the designated lethal officer during the incident.

Operational success is based on the ability of officers to effectively establish designated roles and communicate during critical incidents. Officers improve overall safety by their ability to recognize an unsafe situation and work collectively to ensure a successful resolution.

In this case, Officers Garcia and Cunningham conducted an open-air search, wherein Officers identified a closed door that needed to be cleared. Officer Garcia was initially the contact officer and Officer Cunningham was the cover officer based on their previous discussions.



During the open-air search, officers switched contact and cover roles placing Officer Cunningham in the front contact position during their search. As officers approached a closed storage room door in the area where Mullen was possibly hiding, Officer Garcia directed Officer Cunningham to check behind the door. Officer Cunningham opened the door to discover Mullen. As Officers were giving commands, Officer Garcia holstered his service pistol and stepped from behind Officer Cunningham, who was providing cover, thereby exposing himself to unknown threats by placing himself in front of a doorway leading to an uncleared room with a suspect in the threshold. According to Officer Garcia he wanted to take Mullen into custody quickly and did not want Mullen having access to any possible weapons in the storage room.

The UOFRB noted that officers acted quickly upon contact with Mullen and would have preferred for officers to have taken more time to direct Mullen out and away from the doorway to a safer area before leaving cover to detain him. Even though the comments of the radio call indicated that there was only one suspect, and Mullen matched the description of the single suspect, I would have also preferred that Officers Garcia and Cunningham took more time to direct Mullen into a safer location giving Officers Garcia and Cunningham a much-needed tactical advantage, due to Officer Cunningham's limited tenure as a police officer. Additionally, I would have preferred that Officers Garcia and Cunningham maintained their pre-designated roles due to the limited experience of Officer Cunningham.

Based on the totality of the circumstances, the UOFRB majority determined, and I concur, that in this circumstance, the officers' actions were not a deviation from approved Department tactical training. However, in an effort to enhance future tactical performance, I will direct this to be a topic of discussion during the Tactical debrief.

**Debriefing Point No. 2    Tactical Communication / Tactical Planning**  
(Substantial Deviation without Justification - Officer Garcia)

*Officers are trained to work together and function as a team. In order to ensure officer safety and help ensure an appropriate outcome, the primary officers and cover officers must effectively communicate with one another. Appropriate communication involves advising the primary officer of any critical occurrences or safety issues (California Commission on Peace Officers Standards and Training, Learning Domain 22).*

*Officers must approach every contact with officer safety in mind. Complacency, overconfidence, poor planning, or inappropriate positioning can leave officers vulnerable to attack (California Commission on Peace Officer Standards and Training, Learning Domain 21).*

Prior to this incident, Officers Garcia and Cunningham had worked together for approximately four weeks. Officers discussed tactical situations which included contact and cover roles as well as less-lethal force options in response to radio calls. While enroute to the radio call, Officers Garcia and Cunningham did not discuss a tactical plan with regards to the

battery suspect. Additionally, throughout the course of the radio call, officers exercised minimal aspects of "PATROL."

Operational success is based on the ability of the officers to effectively communicate during critical incidents. The officers, when faced with a tactical incident, improve their overall safety by their ability to recognize an unsafe situation and work collectively to ensure a successful resolution. A sound tactical plan should be implemented to ensure minimal exposure to the officers, while keeping in mind officer safety concerns.

In this case, Officers Garcia and Cunningham minimally developed and communicated a clear tactical plan for the radio call they were responding to. Officers Garcia and Cunningham relied upon their prior shifts worked together and their prior discussions regarding contact and cover roles as a foundation for this radio call.

The UOFRB majority noted the officers minimally developed a tactical plan while enroute to the radio call and throughout the incident. The UOFRB majority would have preferred that officers took additional time to enact a more robust plan prior to their arrival at scene which clearly identified pre-designated roles of contact and cover, as well as, lethal and less-lethal designations. According to Officer Garcia, during his previous discussions regarding tactics with Officer Cunningham, Officer Garcia would maintain the role of the contact officer unless "something dictates otherwise," and Officer Cunningham would be responsible for the deployment of less-lethal force options. According to Officer Cunningham, he was going to be the Designated Cover Officer (DCO) and Officer Garcia would be "less lethal" because that was what the officers had always talked about in the past. As Officers Garcia and Cunningham arrived on scene, Officer Garcia took on the role of contact officer and led Officer Cunningham as they searched for Mullen. During the search, officers switched roles and Officer Cunningham took over the search as contact officer.

In this incident, when Officers Garcia and Cunningham arrived at the intersection of the radio call, they observed the Angela M. who was flagging them down. The officers drove up to Angela M. who pointed in the direction of the So-Cal Tires & Wheel business where Mullen was possibly hiding, which was a different location from the original call location. Officers did not obtain additional information and did not advise CD of their updated location as each officer believed that the other had updated their location with CD. Officers Garcia and Cunningham proceeded to the area which Angela M. pointed towards. As the officers exited their police vehicle in the parking lot of the So-Cal Tires & Wheel business, witness, E. Molina pointed in the same direction and area as Angela M. had done previously, wherein, the officers began an open-air search of the area.

The UOFRB majority noted that even though the officers obtained no additional information from the victim, their actions were supported by an additional witness pointing to the same area where Mullen was possibly hiding. Additionally, Officers Garcia and Cunningham were unsure of the circumstances of the radio call and wanted to immediately detain the suspect to prevent any further violence.

In this incident, upon Officers Garcia and Cunningham's continued search for Mullen, Officer Cunningham opened a closed storage room door and upon doing so discovered Mullen. Officers initially gave Mullen conflicting simultaneous commands as Officer Garcia directed Mullen, "Get out here, come here, stay down" and Officer Cunningham directed Mullen to, "Come out here, stand up, stand up, face away from me, show me your hands!" The UOFRB majority would have preferred Officer Garcia maintain control of the scene as contact officer and had been solely in charge of communicating with Mullen which would have eliminated the conflicting commands and eliminated possible confusion to Mullen; however, as the officers conducted their open-air search, prior to contacting Mullen, Officer Cunningham assumed the contact position and did as any other officer would have done when faced with a suspect directly in front of him by giving commands. Officer Garcia also moved away from the cover provided to him by Officer Cunningham and the wall by which they were standing wherein he obtained a better view of Mullen; upon doing so, Officer Garcia advised Officer Cunningham to holster his service pistol and Officers Garcia and Cunningham initiated physical contact with Mullen. According to Officers Garcia and Cunningham they acted upon their pre-identified plan. Officer Cunningham further elaborated, he initiated physical contact because he stated that it was "natural" for him to apply physical contact to detain Mullen due to how he and Officer Garcia had operated "many times" in previous incidents.

When officers initiated physical contact and attempted to apply handcuffs to Mullen, Mullen resisted, resulting in the Non-Lethal Use of Force. While engaged in the Non-Lethal Use of Force, communication between officers was minimal; however, Officer Garcia did communicate officer safety concerns to Officer Cunningham.

The UOFRB majority expected more planning and control of the situation from Officer Garcia, due to Officer Garcia being an FTO and Officer Cunningham having limited experience as an officer in the field. The UOFRB majority also would have preferred Officer Garcia take a more active leadership role by creating a detailed plan on how to handle the radio call which included contact and cover roles, lethal and less-lethal designations along with better communication between himself and Officer Cunningham. While it could have been better, the UOFRB majority opined that Officers Garcia and Cunningham's preplanning and communication was sufficient and noted that each officer had pre-identified roles. While Officers Garcia and Cunningham's communication efforts and tactical planning were minimal, they did communicate and plan for officer safety concerns which met the standard and did not substantially deviate from established Department procedure and training.

The UOFRB minority reviewed the same set of facts and circumstances and noted that Officer Garcia was remiss in his responsibility as an FTO due to having a unique responsibility to influence Officer Cunningham and was responsible for providing good basic training, as well as, leading by example. Officer Garcia was also partnered with an officer, who was still reliant on his guidance, due to having only approximately four weeks of field experience. While enroute to the radio call, Officer Garcia did not discuss the comments of the call, nor did they discuss potential tactical scenarios associated with such call, leaving Officer Cunningham with minimal direction on how to handle this radio call properly and

safely. The only direction provided to Officer Cunningham was to detain Mullen if they saw him. The UOFRB minority opined that Officer Garcia's actions lacked leadership, direction, and detail which subsequently left Officer Cunningham who is reliant upon Officer Garcia as his FTO without direction or clarity.

The UOFRB minority noted that both officers proceeded without any specificity or further information from Angela M. and responded to the information offered by Angela M. without soliciting any further details. The UOFRB minority opined, that if acquired, the additional information would have benefitted the tactical planning and tactical communication between the officers and not placed the officers at a tactical disadvantage. Additional information obtained from Angela M., would have allowed officers to establish the spousal relationship between Angela M. and Mullen, as well as, identify the mental health concerns of Mullen along with his aggressive behavior, which would have better prepared the officers to engage Mullen and/or request additional resources.

The UOFRB minority opined that acquiring additional information was pivotal to this incident due to the suspect being extremely aggressive and not having taken his mental illness medications. This information would have better prepared the officers to engage the suspect and/or request additional resources. Furthermore, by gathering basic information, the officers could have established who the victim was and learned that she was safe. This would have given the officers time to get resources and conduct the search with additional units. In this case, Officers Garcia and Cunningham had time to slow the incident down and gather additional information regarding Mullen from Angela M. and a description of the area where Mullen had fled. There was no exigency at the time of occurrence. Due to the overall lack of de-escalation techniques by Officers Garcia and Cunningham, which include tactical planning and tactical communication, the UOFRB minority opined that the officers substantially deviated without justification from established Department procedures and training.

I would have preferred that Officers Garcia and Cunningham developed and communicated a more detailed plan, which established roles and assignments including contact and cover as well as lethal and less-lethal designations, as they were enroute to the radio call in order to maintain a tactical advantage and ensure they properly functioned as a team. I additionally would have preferred officers to have communicated more with each other throughout the entirety of the incident to ensure a successful resolution.

Based on the totality of the circumstances, the UOFRB majority determined, and I concur, that Officer Cunningham's tactical communication and tactical planning lacked detail and clarity, however, Officer Cunningham had limited experience and was being guided by Officer Garcia during the incident. Officer Cunningham's actions were not a deviation from approved Department tactical training

Based on the totality of the circumstances, the UOFRB minority determined, and I concur, that Officer Garcia's tactical communication and tactical planning lacked detail and clarity. Officer Garcia's actions were a substantial deviation, without justification, from approved



Department tactical training. In an effort to enhance future tactical performance, I will direct this to be a topic of discussion during the Tactical debrief.

### **Debriefing Point No. 3 Additional Unit Request**

*An "Additional Unit" broadcast is when an officer requires an additional unit for a non-emergency situation. The officer requesting shall include the location, followed by the unit identification and all other pertinent information. An "additional unit" request is not an emergency call and responding officers shall obey all traffic laws when responding (Los Angeles Police Department Manual, Volume 4, Section 120.40).*

Officers Garcia and Cunningham did not request an additional unit or supervisor while they actively searched for Mullen whom they believed could be armed, and who was ultimately located behind a closed storage room door. Officers bypassed Angela M. and witness Molina who could have provided information regarding Mullen's level of intoxication, possession of weapons, and possible mental illness status. Officers initiated physical contact with Mullen prior to requesting additional resources, having knowledge that Mullen was the suspect in an assault investigation.

Although officers are given discretion regarding the appropriate time to broadcast a request for an additional unit, it would have been tactically advantageous to do so based on the officers limited knowledge of Mullen and the crime he committed. Additional personnel would have been advantageous in clearing the location, opening the door and clearing the storage room in which Mullen was discovered, as well as maintaining cover on the unsearched storage room and remainder of the location as Officers Garcia and Cunningham were engaged in the use of force. Additional personnel would also have provided assistance in combating Mullen's resistance and effecting the eventual detention of Mullen.

In this case, the UOFRB noted the officers had the time and opportunity to wait for an additional unit to respond and assist them with gathering information at scene, assist in the search, and open the door to the storage room.

Based on the totality of the circumstances, the UOFRB determined, and I concur, that while identified as an area for needed improvement, the officers' actions were not a deviation from approved Department tactical training. However, in an effort to enhance future performance, I will direct that this to be a topic of discussion during the Tactical Debrief.

### **Debriefing Point No. 4 Updating Status**

*When a unit is conducting a field investigation and no assistance is anticipated, a "Code Six," followed by the location, shall be broadcast. A unit shall not go "Code Six" until it arrives at the scene of a call.*

*Units on "Code Six" status shall remain available for reassignment to priority calls by monitoring their radio frequencies. A unit on "Code Six" status may indicate to the*

*dispatcher additional circumstances, which will make the unit unavailable for assignment to a priority call.*

*These circumstances may include.*

- *Suspect in custody;*
- *Primary unit at a crime scene; and/or,*
- *Required at a back-up, assistance, or help location.*

*Note: The unit shall notify the dispatcher as soon as it is again available for radio calls (Los Angeles Police Department Manual, Volume 4, Section 120.40).*

Officers Garcia and Cunningham did not update their status or generate a new Code-Six location after being directed by Angela M. to the area where Mullen had fled, which was located approximately 400 feet from their initial Code-Six location.

The purpose of going Code-Six and updating the unit's location is to advise CD and officers in the area of the unit's location and the nature of the field investigation, should the incident escalate and necessitate the response of additional personnel. Officer safety is of paramount concern and officers should always strive to maintain the tactical advantage during field duties.

In this case, as officers neared the location of the radio call, Officer Cunningham advised CD that they were Code-Six at the location of radio call. Following Officer Cunningham's Code-Six broadcast, Officers Garcia and Cunningham observed Angela M. directing them towards 5826 South Olive Street. Officers proceeded to the new location in order to locate Mullen; however, they did not notify CD of their updated location. The UOFRB noted that though they would have preferred the officers update their location in order to keep additional resources apprised of their current location, the officers parked their vehicle approximately 400 feet from their Code-Six location and it was clearly visible. The UOFRB opined that based on their vehicle being within the general area of their broadcasted Code-Six location and in line of sight, the officers satisfied the requirements of updating their status.

I would have preferred for Officers Garcia and Cunningham notify CD of their new updated location in order to maintain a tactical advantage and keep additional resources aware of their most current location should additional resources be required.

Based on the totality of the circumstances, the UOFRB determined, and I concur, that in this circumstance, the officers' actions were not a deviation from approved Department tactical training. However, in an effort to enhance future tactical performance, I will direct this to be a topic of discussion during the Tactical debrief.

### Debriefing Point No. 5     Hobble Restraint Device

*All In addition to the basic uniform (Department Manual Section 3/614), officers assigned to uniformed field, a geographic Area front desk, or traffic division front desk-related duties, shall carry the following equipment:*

*Baton. Officers using motorized equipment while on-duty shall carry their batons in a manner authorized by their commanding officer. The carrying of the baton by officers assigned to intersection traffic control shall be at the option of their commanding officer:*

*Hobble Restraint Device. Except for motorcycle officers, the hobble restraint device shall be carried on the key ring holder of the officer's equipment belt, in either sap pocket of the uniform trouser or in a Department approved carrying case. Motorcycle officers shall carry the hobble restraint device in a uniform pants pocket, or in a Department approved carrying case*

In this case Officer Garcia responded to the radio call of an in-progress battery, upon arrival the battery had ceased, and the suspect had fled into hiding, wherein time was afforded to Officer Garcia to ensure he was properly equipped. Officer Garcia did not take advantage of the time afforded to him and initiated a search without his side-handle baton and his Hobble Restraint Device (HRD).

Based on the totality of the circumstances, the UOFRB determined, and I concur, that in this circumstance I would have preferred Officers Garcia taken the time to properly equip himself with all his required equipment before commencing with the search due to the lack of exigent circumstances. Additionally, Officer Garcia as a Training Officer has the responsibility to teach when and how to properly utilize equipment. The use of the HRD in this application would have provided additional assistance to the officers and aided the overall control of the suspect. In an effort to enhance future tactical performance, I will direct this to be a topic of discussion during the Tactical debrief.

### Additional Tactical Debrief Topics

**Required Equipment** – The investigation revealed that Officer Garcia ~~was~~ not equipped with his side-handle baton or his Hobble Restraint Device (HRD) at the time of the incident. Officer Garcia is reminded of the importance of having his required field equipment on his person to allow for additional use of force options and to de-escalate an incident. I ~~will~~ direct this to be a topic of discussion during the Tactical Debrief.

**Basic Firearm Safety Rules** – Body Worn Video revealed that Officer Cunningham drew his service pistol while in the parking lot, as he searched for Mullen. While holding his service pistol in his right hand, Officer Cunningham used his left hand to push open the storage room door. In the process of this motion, Officer Cunningham momentarily covered his left hand with the muzzle of his service pistol. Officer Cunningham is reminded to adhere to the Department's

four basic firearm safety rules at all times. I will direct this to be a topic of discussion during the Tactical Debrief.

**Simultaneous Commands (Conflicting)** – Officer Garcia and Cunningham issued simultaneous conflicting commands when they first discovered Mullen and attempted to get him to voluntarily comply with their orders. Officer Cunningham ordered Mullen to stand up and face away from him, while Officer Garcia directed Mullen to come out of the storage room and stay down. Officer Garcia and Cunningham are reminded to adhere to their pre-designated roles of contact and cover and to provide consistent commands so as not to introduce confusion to a suspect which could escalate a situation. I will direct this to be a topic of discussion during the Tactical Debrief.

**Cover and Concealment** – After opening the door to the storage room, Officer Garcia placed himself in front of the open entryway. Officer Garcia left the cover that was provided by his partner and the wall and moved into the open space wherein he subsequently became involved in a use of force in front of an unsearched room. Officer Garcia is reminded that distance and cover allow the officer time to better manage a situation. I will direct this to be a topic of discussion during the Tactical Debrief.

**Use of Profanity** – The investigation revealed that Officer Garcia utilized profanity on three separate occasions during the use of force. The use of profanity can demonstrate a lack of professionalism of Department personnel. I will direct this to be a topic of discussion during the Tactical Debrief.

**Note:** Newton Area determined that Officer Garcia had a previous discourtesy complaint for an incident that occurred on July 31, 2014. The previous complaint was adjudicated as Non-Disciplinary/Actions Could Have Been Different. Due to Officer Garcia's previous discourtesy complaint, Captain H. Mohammadi, Serial No. 36506, Commanding Officer, Newton Patrol Division recommended that this issue was best addressed through the generation of a personnel complaint.

**Non-Categorical Use of Force Investigation Protocols** – The investigation revealed the use of non-lethal force continued as Sergeant Tuialii was on scene. Sergeant Tuialii did not realize his direction and oversight to officers with regard to carrying Mullen to the police vehicle would deem him involved in the non-lethal use of force. Sergeant Tuialii believed the use of force had ended prior to his arrival at scene. Sergeant Tuialii is reminded that when providing guidance and direction in relation to a use of force he shall follow Non-Categorical Use of Force protocols for future investigations. I will direct this to be a topic of discussion during the Tactical Debrief.

### **Command and Control**

*Command and Control is the use of active leadership to direct others while using available resources to coordinate a response, accomplish tasks and minimize risk. Command uses active leadership to establish order, provide stability and structure, set objectives and create conditions under which the function of control can be achieved with minimal risk. Control*



*implements the plan of action while continuously assessing the situation, making necessary adjustments, managing resources, managing the scope of the incident (containment), and evaluating whether existing Department protocols apply to the incident.*

*Command and Control is a process where designated personnel use active leadership to command others while using available resources to accomplish tasks and minimize risk. Active leadership provides clear, concise, and unambiguous communication to develop and implement a plan, direct personnel and manage resources. The senior officer or any person on scene who has gained sufficient situational awareness shall initiate Command and Control and develop a plan of action. Command and Control will provide direction, help manage resources, and make it possible to achieve the desired outcome. Early considerations of PATROL will assist with the Command and Control process (Los Angeles Police Department, Training Bulletin, Volume XLVII Issue 4, July 2018).*

*Line Supervision – Defined. A supervisor who has the specific responsibility of issuing directions and orders to designated subordinates shall be considered as having the duty of line supervisor and shall be held accountable for achieving conformance with the directions and orders that he/she issues (Los Angeles Police Department Manual, Volume 3, Section 135).*

*Incident Commander (IC) – In accordance with Department Policy, the IC sets the objectives, the strategy and directs the tactical response. Directing the tactical response means applying tactics appropriate to the strategy, assigning the right resources and monitoring performance (Los Angeles Police Department, Supervisor's Field Operations Guide, Volume 2, LAPD Emergency Operations Guide).*

The investigation revealed Sergeant Tuialii was the first supervisor to arrive at the location. Sergeant Tuialii assumed the role of Incident Commander, however the incident was believed to be a Non-Categorical Use of Force at the time. Sergeant Tuialii directed officers to pick up Mullen and place him into a police vehicle and request an RA. The investigation revealed, Sergeant Tuialii initially believed he was a witnessing supervisor to the Non-Lethal Use of Force, and requested an additional supervisor to the location to conduct the Non-Categorical Use of Force investigation. Sergeant Johnson responded and took over investigative responsibility for the Non-Lethal Use of Force investigation. After further investigation by Sergeant Tuialii, he determined he had arrived after the Non-Lethal Use of Force concluded and overtook investigative responsibility once again for the Non-Categorical Use of Force investigation. The following afternoon, based on Mullen's medical status, the incident was re-classified as a Categorical Use of Force and FID assumed investigative responsibility. The UOFRB noted that in the future should Sergeant Tuialii happen across a similar circumstance, he should contact either the Watch Commander or another, more experienced supervisor to obtain advice on determining the circumstances of a use of force incident.

The UOFRB noted that at the time the supervisors arrived, as well as, throughout their investigation at scene, the incident was considered a Non-Categorical Use of Force. The UOFRB noted that the Non-Lethal Use of Force occurred at approximately 0907 hours, however,

the incident was not re-classified as a Categorical Use of Force until the following day at approximately 1730 hours.

The actions of Sergeants Tuialii and Johnson were consistent with Department supervisory training and my expectations of a field supervisor during a critical incident.

### **Tactical Debrief**

In conducting an objective assessment of this case, the UOFRB minority determined, and I concur, that the tactical communications utilized by Officer Garcia substantially, and without justification, deviated from approved Department tactical training, thus requiring a finding of Administrative Disapproval.

In conducting an objective assessment of this case, the UOFRB majority determined, and I concur, that Sergeant Tuialii, and Officers Cunningham, Lassak, and Vogel's tactics did not represent a deviation from approved Department tactical training.

Each tactical incident also merits a comprehensive debriefing. In this case, there were identified areas where improvement could be made. A Tactical Debrief is the appropriate forum for the involved personnel to discuss individual actions that took place during this incident.

Therefore, I will direct that Sergeant Tuialii and Officers Garcia, Cunningham, Lassak, and Vogel attend a Tactical Debrief and that the specific identified topics are discussed.

**Note:** Additionally, the Tactical Debrief shall also include the following mandatory discussion points:

- Use of Force Policy;
- Equipment Required/Maintained;
- Tactical Planning;
- Radio and Tactical Communication (including Code Six);
- Tactical De-Escalation;
- Command and Control; and,
- Lethal Force.

### **General Training Update (GTU)**

On August 8, 2019, Officers Garcia and Cunningham attended a GTU. All mandatory topics were covered.

### **Drawing/Exhibiting**

Department policy relative to drawing and exhibiting a firearm is: *"An officer's decision to draw or exhibit a firearm should be based on the tactical situation and the officer's reasonable belief there is a substantial risk that the situation may escalate to the point where*

*deadly force may be justified” (Los Angeles Police Department Manual, Volume No. 1, Section 556.80).*

### **Officer Garcia**

According to Officer Garcia, Mullen had already assaulted Angela M. and he believed Mullen was possibly armed and posed the threat of danger. As Officer Garcia exited his police vehicle he drew his service pistol as he searched for Mullen.

Officer Garcia recalled,

*“When we began to clear the corner when we initially first made our approach to – to the direction where they employee flag or directed us.”<sup>9</sup>*

*Like I said, this was the man that was assaulting the woman. I didn’t know if he was armed with anything.”<sup>10</sup>*

*Didn’t know what type of individual we were dealing with. And when we – when we clear a corner or any type of residence or location, we always want to unholster just in case there’s any type of any threat of danger.”<sup>11</sup>*

According to Officer Garcia, he and Officer Cunningham located Mullen in a contained storage room. Officers gave Mullen commands, and as Mullen, who appeared unarmed, began to exit the room, Garcia holstered his service pistol prior to initiating physical contact. He communicated with his partner, Officer Cunningham, to holster his service pistol as well in anticipation of his plan to initiate physical contact with Mullen.

Officer Garcia recalled,

*“Yeah. So as my partner was giving him commands, I kind of offset a little bit to the left of my partner so I could get a –better visual on the suspect. – And that’s when I continue – I gave him commands as well, “Hey, make sure keep his hands up. And he started to come out, that’s when I advised my partner, “Hey, holster up. Let’s go hands on. Grab his – right.” That’s when I was on the left side, so I said, “Let’s grab him. Let’s pull him out.”<sup>12</sup>*

*Before we went hands on.”<sup>13</sup>*

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<sup>9</sup> Officer Garcia, Page 19, Lines 5-7

<sup>10</sup> Officer Garcia, Page 19, Lines 10-12

<sup>11</sup> Officer Garcia, Page 19, Lines 14-18

<sup>12</sup> Officer Garcia, Page 21, Lines 2-4, 6, and 8-13.

<sup>13</sup> Officer Garcia, Page 22, Line 10

### Officer Cunningham (Two occurrences)

#### First Occurrence

According to Officer Cunningham, he believed Mullen could be armed with a weapon and had been designated as the lethal cover officer. Based on the information from the radio call, Mullen had already assaulted Angela M.

Officer Cunningham recalled,

*"I unholstered my pistol – once we began to clear that corner – I was going to be lethal, he was going to be less lethal. – The—we always talked about it in the past that that would be our, our kind of designation."<sup>14</sup>*

*I unholstered because he – the radio – because the comments of the radio call. He was a man who assaulted a woman, and we didn't know if that was with weapons. That wasn't really described. And then the area, we – we didn't know if in that area there were any weapons that he was hiding."<sup>15</sup>*

While searching for Mullen, Officer Garcia asked Officer Cunningham if he could see anyone, to which Officer Cunningham shook his head no and holstered his service pistol.

#### Second Occurrence

Officer Cunningham drew his service pistol for the second-time mere seconds after holstering, as he continued to be involved in a tactical situation where he had previously drawn his service pistol due to the belief Mullen could be armed with a weapon and had already assaulted Angela M.

**Note:** A review of Officer Garcia's BWV by FID investigators captured Officer Cunningham visually searching the area in the southeast corner of the lot. Officer Garcia asked if Officer Cunningham could see anyone, and Officer Garcia shook his head no. Officer Cunningham then holstered his service pistol. Officer Garcia directed Officer Cunningham to clear the corner of the lot, and Officer Cunningham once again unholstered his service pistol.

Officer Cunningham did not provide a statement documenting the second drawing of his service pistol.

Officer Cunningham holstered his service pistol at the direction of Officer Garcia and prior to making physical contact with Mullen, because they did not observe any weapons in Mullen's hands.

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<sup>14</sup> Officer Cunningham, Page 5, Lines 7-8, Lines 11-12 and Lines 19-21

<sup>15</sup> Officer Cunningham, Page 13, Lines 24-25 and page 14, Lines 1-4



Officer Cunningham recalled,

*"I holstered – my partner, TO told me go ahead and holster my partner."<sup>16</sup>*

*So I saw his hands a little bit, but I think my TO had a better vantage point so he was able to tell me, you know what? I think he – I think his hands are, you know, he doesn't have any weapons so go ahead and holster up."<sup>17</sup>*

In this case, the UOFRB conducted a thorough evaluation of the reasonableness of Officers Garcia's and Cunningham's Drawing/Exhibiting. The UOFRB noted that the officers responded to a radio call of an assault, where the suspect was hiding and whose whereabouts were unknown to officers who believed the suspect could be armed with a weapon.

Based on the totality of the circumstances, the UOFRB determined, and I concur, that an officer with similar training and experience as Officers Garcia and Cunningham, while faced with similar circumstances, would reasonably believe that there was a substantial risk the situation may escalate to the point where deadly force may be justified.

Therefore, I find Officers Garcia's and Cunningham's Drawing/Exhibiting to be In-Policy, No Further Action.

#### Use of Force – General

*It is the policy of this Department that personnel may use only that force which is "objectively reasonable" to:*

- *Defend themselves;*
- *Defend others;*
- *Effect an arrest or detention;*
- *Prevent escape; or,*
- *Overcome resistance*

*The Department examines reasonableness using Graham v. Connor and from the articulated facts from the perspective of a Los Angeles Police Officer with similar training and experience placed in generally the same set of circumstances. In determining the appropriate level of force, officers shall evaluate each situation in light of facts and circumstances of each particular case. Those factors may include, but are not limited to:*

- *The seriousness of the crime or suspected offense;*
- *The level of threat or resistance presented by the subject;*
- *Whether the subject was posing an immediate threat to officers or a danger to the community;*

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<sup>16</sup> Officer Cunningham, Page 16, Lines 22-23

<sup>17</sup> Officer Cunningham, Page 17, Lines 5-9

- *The potential for injury to citizens, officers or subjects;*
- *The risk or apparent attempt by the subject to escape;*
- *The conduct of the subject being confronted (as reasonably perceived by the officer at the time);*
- *The amount of time and any changing circumstances during which the officer had to determine the type and amount of force that appeared to be reasonable;*
- *The availability of other resources;*
- *The training and experience of the officer;*
- *The proximity or access of weapons to the subject;*
- *Officer versus subject factors such as age, size, relative strength, skill level, injury/exhaustion and number officers versus subjects; and,*
- *The environmental factors and/or other exigent circumstances. (Los Angeles Police Department Manual, Volume 1, Section 556.10)*

#### **Non-Lethal Use of Force<sup>18</sup>**

*It is the policy of this Department that personnel may use only that force which is "objectively reasonable" to:*

- *Defend themselves;*
- *Defend others;*
- *Effect an arrest or detention;*
- *Prevent escape; or,*
- *Overcome resistance (Los Angeles Police Department Manual, Volume 1, Section 556.10).*

#### **Officer Garcia - (8) Firm grip, (5) Body Weight, (5) Physical Force, (1) Strike**

According to Officer Garcia, he approached Mullen to take him into custody. As Officer Garcia attempted to place Mullen in position to be handcuffed, Mullen's body became extremely rigid and Mullen began to resist officer's actions. To combat Mullen's resistance and effect a detention, Officer Garcia utilized firm grips to maintain control of Mullen's arms, bodyweight to prevent Mullen from standing up and preventing escape, physical force to position Mullen at a position of disadvantage and a distraction strike to make Mullen stop his resistance and submit to officer's force applications and demands.

According to Officer Garcia, he observed Mullen seated on the ground in a storage closet attempting to hide from officers. After being given direction, Mullen laid in the threshold of the doorway on his back with his legs outstretched inside of the room while his head, torso, and arms, extended outside of the room. Officer Garcia used both of his hands to grab Mullen's left wrist. Officers then pulled Mullen until his legs were entirely out of the storage area.

Officer Garcia recalled,

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<sup>18</sup> Los Angeles Police Department Manual, Volume 1, Section 556.10.

*I didn't want to keep him inside in that storage facility any longer than we had to just in case he did have some type of weapon in there or he was able to resist and try to go back inside and arm himself. So I wanted to get him out of that room.<sup>19</sup>*

*I just wanted to maintain control of it. I didn't want to reach -- him reaching for anything. I wanted to assist him in getting out of that room. So I wanted to eliminate any type of threat that could have potentially been inside of that -- the storage room.<sup>20</sup>*

Surveillance video depicted once Mullen was moved from the doorway, Officer Garcia used both of his hands on Mullen's left wrist and first attempted to roll Mullen toward his left side to place Mullen on his stomach.

Officer Garcia recalled,

*We attempted to roll him over to put him in handcuffs, detain him for battery or, you know, some type of assault investigation. And as we went to go do that, the suspect immediately tensed up, and that's when he -- he began to fight with us or resist us putting him in handcuffs. We attempted multiple times to try to roll him on his back.<sup>21</sup>*

Surveillance video depicted that officers positioned Mullen facedown. As Officer Garcia gripped Mullen's right arm, near the wrist, he positioned himself on Mullen's right side as Mullen appeared to bend his arm toward his head.

Officer Garcia recalled,

*He knew we were -- I believe he knew we were trying to get him in handcuffs, and that's why he didn't want to go with the program.<sup>22</sup>*

Surveillance video depicted Officer Garcia placed his left knee on the center of Mullen's back, as he applied his body weight while attempting to hold onto Mullen's right wrist with both hands. Mullen continued to resist which resulted in Officer Garcia's losing his grip of Mullen wrist.

Officer Garcia recalled,

*To control him from trying to get back up or push back up or possibly attempt to flee away from our grip or break free of our grip.<sup>23</sup>*

*I'm keep -- at that point, to continue -- I didn't -- like I said, I didn't want him to move his right hand under his body any further than he had or towards his waistband.<sup>24</sup>*

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<sup>19</sup> Garcia, Pg. 21, lines 14-18

<sup>20</sup> Garcia, Pg. 22, lines 18-23

<sup>21</sup> Garcia, Pg. 8, lines 8-14

<sup>22</sup> Garcia, Pg. 28, lines 15-17

<sup>23</sup> Garcia, Pg. 30, lines 21-23

<sup>24</sup> Garcia, Pg. 30, lines 5-12

Surveillance video depicted that during the struggle Mullen rolled over, wherein, Officer Garcia applied bodyweight with the left side of his upper torso and laid across Mullen's upper chest. Officer Garcia broadcast for a backup. Officer Garcia recalled,

*His whole body was moving at that point from what had appeared like to me like his upper body, his arms, his head. He was constantly moving around.*<sup>25</sup>

Surveillance video depicted Officer Garcia while laying across Mullen momentarily placed his radio down onto the ground, switched his hand position to re-grip Mullen's right wrist with his left hand, pinning it in a bent position near Mullen's head.

Surveillance video depicted that Officer Garcia placed his left knee on Mullen's upper back area and applied bodyweight. Officer Garcia then straightened Mullen's right arm, using both his hands on Mullen's right wrist as he began to pull it toward Mullen's back.

Officer Garcia recalled,

*I'm trying to maintain control of the suspect*<sup>26</sup>

Surveillance video depicted that Officer Garcia placed his right hand on the back of Mullen's right triceps and simultaneously placed his right knee on the back of Mullen's right shoulder, applying bodyweight causing Mullen to lay face down on the ground.

Officer Garcia recalled,

*I know my legs are at some point throughout the use of force, they do -- they were on the ground. At some point, I do try to use my -- my knee to -- my knee on the suspect's back to use my body weight to control him to prevent him from continue to go try to push himself up or -- or break free of our grip. I do recall using my legs or my feet on the ground, also as -- as balance points -- balance points to make sure I maintain my body weight on the suspect.*<sup>27</sup>

According to Officer Garcia, Mullen was not complying with commands and was actively resisting. Officer Garcia in an effort to gain control of Mullen's right arm and release Mullen's rigid tension used his closed right fist and struck Mullen once in his upper back.

Officer Garcia recalled,

*"Like I said, he was super rigid, super tense, super tight where he was not going with our*

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<sup>25</sup> Garcia, Pg. 32, lines 20-23

<sup>26</sup> Garcia, Pg. 34, lines 20-21

<sup>27</sup> Garcia, Pg. 60, lines 4-12

*commands.*<sup>28</sup>

*I wanted to give him a distraction strike to try to get him to release the tension or not be so tight, maybe focus on that distraction strike where even if it's just for a quick second, I could maintain full control of his arm and get it behind his back.*<sup>29</sup>

*So I do remember giving him a distraction strike to the upper portion of his back, where shortly after that, I was able to main -- or get control of his arm to place it behind his back to place the second handcuff on.*<sup>30</sup>

Surveillance video depicted Officer Garcia placed his right forearm between Mullen's shoulder blades and neck, while using bodyweight to control Mullen.

Officer Garcia recalled,

*"So I wanted to maintain control of the suspect, so I used my forearm to maintain my body weight on top of him to prevent him from trying to get up any further."*<sup>31</sup>

As additional units arrived on scene, Officer Garcia released his application of bodyweight and momentarily walked away from Mullen. Soon after, Officer Garcia observed Officer's Cunningham and Lassak lift and attempt to carry Mullen to a police vehicle. Officer Garcia assisted Officer's Cunningham and Lassak and applied physical force to place Mullen into an upright position and firm grips to Mullen's right arms to carry him to the police vehicle.

Surveillance video depicted Officer Garcia use his right hand to push Mullen's upper chest back into an upright position and placed his left hand under Mullen's right armpit to assist in carrying Mullen to the police vehicle.

Officer Garcia recalled,

*"But I do remember carrying him, and he was still actively resisting, kind of moving around, so which would cause like my grip to slip from him or -- I didn't want him to fall on the ground as we were carrying him."*<sup>32</sup>

The UOFRB reviewed each application of non-lethal force by Officer Garcia in this case and determined that the force used was reasonable based on Mullen's physical resistance. Mullen did not comply with officers' lawful orders to submit to detention and escalated the incident further when he physically resisted officers as they attempted to effect his arrest. Throughout the incident, Office Garcia issued multiple commands to de-escalate the situation. Officer Garcia

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<sup>28</sup> Garcia, Pg. 35, lines 11-13

<sup>29</sup> Garcia, Pg. 37-38, lines 25 and 1-5

<sup>30</sup> Garcia, Pg. 35, lines 15-19

<sup>31</sup> Garcia, Pg. 64, lines 12-14

<sup>32</sup> Garcia, Pg. 46, lines 6-10



used non-lethal force to take Mullen into custody and bring the incident to a successful resolution.

Based on the totality of the circumstances, the UOFRB determined, and I concur, that an officer with similar training and experience as Officers Garcia, while faced with similar circumstances, would believe that the same application of non-lethal force would be reasonable to overcome Mullen's resistance and effect his arrest.

Therefore, I find Officers Garcia's Non-Lethal Use of Force to be objectively reasonable and In Policy, No Further Action.

**Officer Cunningham – (7) Firm Grip, (7) Body Weight, (9) Physical Force, (1) Wrist Lock**

According to Officer Cunningham, he approached Mullen to take him into custody. As Officer Cunningham attempted to roll Mullen over to initiate handcuffing, Mullen tensed his body and physically resisted his detention. Officer Cunningham utilized firm grip to control Mullen's arms and legs, bodyweight as he maintained Mullen's body on the ground as Mullen attempted to stand, physical force as he pulled Mullen's arms behind his back and turned Mullen from his back to his stomach and, a wrist lock as he gained control of Mullen's hands for handcuffing.

Surveillance video depicted that Officer Cunningham moved to Mullen's right side, used his left hand to grip Mullen's right wrist and his right hand to hold onto Mullen's right elbow then pulled Mullen until his legs were entirely out of the storage area.

Officer Cunningham recalled,

I was trying to tell him to come out. First, I was trying to tell him to stand up because, you know, I didn't want him to, you know, the way he was kind of hunched over, I didn't want him going to his waist, so I was telling him to stand up so he could walk -- I can walk him out and back him out facing away from me. But he really wasn't complying with that and he was already down on the ground.<sup>33</sup>

*Yeah. He -- he was -- he was -- he was starting -- looked like he was starting to sit up, but then he stopped sitting up so we said, okay, you know what? Let's go ahead and -- and grab him and bring him out because we didn't want him reaching for his waistband. He was in that closet. The area was kind of dark. We hadn't been able to fully see inside the closet. We didn't know if he had any weapons in the area. So we wanted to, you know, get him out quickly.*<sup>34</sup>

*So we -- I went ahead and grab his right arm. And in an attempt to take him into custody, we went to roll him over on his stomach.*<sup>35</sup>

<sup>33</sup> Cunningham, Pg. 17-18, lines 22-25 and 1-5

<sup>34</sup> Cunningham, Pg. 18-19, lines 20-25 and 1-4

<sup>35</sup> Cunningham, Pg. 7, lines 18-21

According to Officer Cunningham, after Mullen was out of the room he wanted to take Mullen into custody. Officer Cunningham grabbed Mullen's left bicep/triceps to roll Mullen over onto his stomach and Mullen tensed up.

Officer Cunningham recalled,

*We went to roll him over on his stomach. At which point, I ended up being on the grabbing his left arm at that point because we rolled him over and then he became -- at that point when we rolled him over on his stomach and I went to grab him, he became tense, rigid. At which point, I ended up being on the -- grabbing his left arm at that point because we rolled him over and then he became -- at that point when we rolled him over on his stomach and I went to grab him, he became tense, rigid.<sup>36</sup>*

Surveillance video depicted the officers positioned Mullen face down. Mullen bent his left arm and placed it close into his upper body. Officer Cunningham attempted to pull Mullen's left arm out as he placed his right knee on Mullen's back and applied bodyweight. Additionally, Officer Cunningham placed his right hand on Mullen's left triceps and used his left hand to grab Mullen's left wrist.

*He just, he didn't want to be placed in cuffs. So he started -- he started to kind of combat that a little bit. And he started to kind of stand -- try to stand up.<sup>37</sup>*

*The wrist and elbow, to kind of get him in a -- in like a rear arm so I can be able to put his hands behind his back and gain compliance.<sup>38</sup>*

Surveillance video depicted that while Officer Garcia applied bodyweight with the left side of his upper torso laid across Mullen's upper chest and broadcast for a backup, Officer Cunningham continued to hold on to Mullen's left wrist with his left hand and was able to pin Mullen's arm down across Mullen's chest.

*I was trying to do the same thing with the -- I believe I had his tricep with one hand and his wrist with the other.<sup>39</sup>*

Surveillance video depicted that Officer Cunningham repositioned himself to the right side of Mullen. Officer Cunningham released Mullen's wrist and used his right hand on Mullen's left elbow to begin pushing the elbow across Mullen's body, and grabbed Mullen's jeans near his left knee, to roll Mullen onto his stomach.

*He kept trying to roll over back to his back so we couldn't get -- so we couldn't get to his hands...I don't. I just remember I ended up having to roll him -- use both hands, utilizing*

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<sup>36</sup> Cunningham, Pg. 7, lines 21-25

<sup>37</sup> Cunningham, Pg. 8, lines 1-2

<sup>38</sup> Cunningham, Pg. 20, lines 18-20

<sup>39</sup> Cunningham, Pg. 22 Lines 23-25

*both hands, kind of rolled him to the left, so he must have -- I don't know -- we -- I -- I remember rolling him to the left using both hands.<sup>40</sup>*

Surveillance video depicted that Officer Cunningham then placed his right hand on the back of Mullen's left shoulder and completed rolling Mullen face down on to his stomach. Once Mullen was face down, Officer Cunningham placed his left knee on Mullen's lower back and applied bodyweight. Officer Cunningham struggled to control Mullen's left arm, Mullen was able to momentarily roll on to his right side, bending his left arm, pulling it in near his torso.

*He -- he was just very tense, became rigid. He was trying to -- it felt like he was trying to yank away from our -- our grip, our grip. He's trying to -- it seemed like he's trying to tuck it under his -- under his chest or under his stomach.<sup>41</sup>*

*So as he's -- as he's trying to get up, I'm using my body weight. I don't remember where I had my knees somewhere. Eventually ended up like somewhere in his upper back area. I was trying to keep him on the ground but he kept rolling over, rolling over, and kept trying to stand up.<sup>42</sup>*

Surveillance video depicted that Officer Cunningham was able to reacquire his grip on Mullen's left wrist and forearm and pull it behind his back. Simultaneously, Officer Cunningham placed his right knee on Mullen's upper back, applying bodyweight.

*My knee is somewhat in his upper back area.<sup>43</sup>*

Surveillance video depicted that Officer Cunningham applied a wrist lock to Mullen's left wrist, while removing his handcuffs with his right hand. Officer Cunningham then placed one handcuff on Mullen's left wrist.

*He's -- he's tucking his hands. He's trying to stand up. And like I said, we haven't really seen what's on the -- in his pockets, in his waistband. He keeps going for that area, and I keep trying to get his hands free from that area. And he keeps tucking his hands under his chest, under his stomach. He doesn't want to let us place him in cuffs.<sup>44</sup>*

Surveillance video depicted that Mullen kicked his legs and was able to lift his chest partially off the ground. As Mullen was lifting his torso off the ground, Officer Cunningham used his right hand to put bodyweight on Mullen's left shoulder. Mullen was still able to lift his head and torso slightly off the ground. As Mullen turned his head to the right toward Officer Garcia, Officer Cunningham placed his right hand on the back of Mullen's head and applied bodyweight.

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<sup>40</sup> Cunningham, Pg. 24, lines 12-14, 21-25

<sup>41</sup> Cunningham, Pg. 23, lines 3-5 and 16-18

<sup>42</sup> Cunningham, Pg. 24, lines 5-9

<sup>43</sup> Cunningham, Pg. 26, lines 20-21

<sup>44</sup> Cunningham, Pg. 28, lines 1-7

*I can see it. His upper -- upper body. Kind of a little bit of the lower body like he's kind of bridging. Kind of -- I don't know how to -- how to describe it. He's -- he -- he's lifting his -- his -- his mid-section and he's kind of like -- I can feel the force from his legs like he's -- he's trying to -- either ease trying to get on all fours. His knees and hands, or he's trying to stand up completely. It just felt like I can feel the weight of him trying to stand up. Arching his body.<sup>45</sup>*

*He's kind of just kind of like flailing left and right.<sup>46</sup>*

Surveillance video depicted that Officer Cunningham then began to assist Officer Garcia to place Mullen's right arm behind his back. Officer Cunningham used his right hand on Mullen's right forearm to assist with this motion. Mullen became rigid and tensed up his body as he tucked his right hand under his torso area.

*He just, he didn't want to be placed in cuffs. So he started -- he started to kind of combat that down a little bit. And he started to kind of stand -- try to stand up. He kept raising his -- his mid-section, trying to get on his knees, kept rolling over back and forth. Didn't want to stay on his stomach to allow us to place him in -- in handcuffs...My partner was able to help me get the other hand from underneath, which he had tucked under his -- under his stomach.<sup>47</sup>*

Surveillance video depicted that Officer Cunningham then handcuffed Mullen's right wrist and placed his right knee on Mullen's middle back. Officers maintained body weight on Mullen until back-up units arrived.

*We eventually -- I was eventually able to get one of the hands, I don't recall which one, but one of the hands I was able to cuff...And I was able to cuff that -- the second wrist.<sup>48</sup>*

*My knee is somewhat in his upper back area.<sup>49</sup>*

Surveillance video depicted Officer Cunningham conduct a pat down search of Mullen and assist Mullen into the seated position. Officer Cunningham requested Mullen stand utilizing his own power; however, Mullen provided no response. Officer Cunningham applied firm grips to Mullen's left arm and left hand and utilized physical force to lift Mullen into the standing position. He then along with Officers Garcia and Lassak overcame Mullen's resistance and carried him to an awaiting police vehicle.

Officer Cunningham recalled,

*"At that point, I completed my search for weapons. We picked him up."<sup>50</sup>*

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<sup>45</sup> Cunningham, Pg. 25, lines 4-6, 8-12, 14-16, 20

<sup>46</sup> Cunningham, Pg. 29, lines 24-25

<sup>47</sup> Cunningham, Pg. 8, lines 1-7 and 10-12

<sup>48</sup> Cunningham, Pg. 8, lines 8-10 and 12-13

<sup>49</sup> Cunningham, Pg. 26, lines 20-21

<sup>50</sup> Cunningham, Pg. 8, Lines 13-15

The UOFRB reviewed each application of non-lethal force by Officer Cunningham in this case and determined that the force used was reasonable based on Mullen's physical resistance. Mullen did not comply with officers' lawful orders to submit to detention and escalated the incident further when he physically resisted officers as they attempted to effect his detention. Throughout the incident, Officer Cunningham issued commands to de-escalate the situation. Officer Cunningham used non-lethal force to take Mullen into custody and bring the incident to a successful resolution.

Based on the totality of the circumstances, the UOFRB determined, and I concur, that an officer with similar training and experience as Officers Cunningham, while faced with similar circumstances, would believe that the same application of non-lethal force would be reasonable to overcome Mullen's resistance and effect his arrest.

Therefore, I find Officers Garcia's Non-Lethal Use of Force to be objectively reasonable and In Policy, No Further Action.

#### **Officer Lassak – (3) Firm Grip and (2) Physical Force**

According to Officer Lassak, he observed Mullen was controlled on his upper body, so he applied a firm grip with both hands to Mullen's legs to overcome his resistance to kick other officers.

Officer Lassak recalled,

*"I proceeded to try and help them any way I could. It seemed like they had both his arms under control, so I kind of moved down to his feet area just in case, you know, he decided he wanted to resist in any way by kicking an officer or anything like that."<sup>51</sup>  
He was pretty stiff, like tensing up, like he was trying to break the cuffs."<sup>52</sup>*

According to Lassak, he was directed to pick up Mullen off the ground and carry him to the police vehicle, as he was non-complaint. Officer Lassak used both his hands to apply firm grip on Mullen's right arm and utilized physical force to raise Mullen into an upright position. He and Officer Cunningham began to drag Mullen to the police vehicle where Officer Garcia took hold of Mullen's right arm and Officer Lassak was directed by Sergeant Tuialii to carry Mullen's legs. Officer Lassak released his grip on Mullen's arms and applied a firm grip to Mullen's legs. Officer Lassak assisted in carrying Mullen to the police vehicle where Mullen was placed in a seated position, outside of the vehicle, so officers could reacquire their grip and place a non-complaint Mullen into the vehicle.

*"So – I grabbed his right arm. I grabbed one with my right arm on his right bicep and then left arm on his left forearm with another officer. And then as we picked him up, he was*

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<sup>51</sup> Lassak, Pg. 6, Lines 19-24

<sup>52</sup> Lassak, Pg. 17, Lines 11-13



*pretty rigid. He kind of was -- I wouldn't say resisting, but he was uncooperative by not -- not wanting to stand up or use any of his own muscles. He just kind of was limp in a sorts.*<sup>53</sup>

*And I was directed by Sergeant -- I'm going to butcher this -- Tuialii. That is when he stated to -- for me to grab his legs and we were just going to carry him to the shop.*"<sup>54</sup>

The UOFRB reviewed each application of non-lethal force by officer Lassak in this case and determined that the force used was reasonable based on Mullen's continued physical resistance. Mullen continued to not comply with officers' lawful orders and refused to assist officers under his own accord. Officers attempted to have Mullen cooperate through commands in an effort to de-escalate the situation. Officer Lassak used non-lethal force to carry Mullen to the police vehicle and bring the incident to a successful resolution.

Based on the totality of the circumstances, the UOFRB determined, and I concur, that an officer with similar training and experience as Officer Lassak, while faced with similar circumstances, would believe that the same application of non-lethal force would be reasonable to overcome Mullen's resistance and effect his arrest.

Therefore, I find Officer Lassak's Non-Lethal Use of Force to be objectively reasonable and In Policy, No Further Action.

#### **Additional**

**BWV Activation** – The investigation revealed Sergeant Tuialii had three BWVs related to this incident. The first BWV recording was not activated during his Code-Three response indicating a late BWV activation. Sergeant Tuialii's second and third BWVs did not capture two full minutes of buffering prior to activation.

This issue was brought to the attention of Captain Mohammadi advised it was addressed through the issuance of an Employee Comment Sheet and the generation of a Supervisor Action Item. The Commanding Officer of OCB and the Director of the Office of Operations (OO) concurred with this action. As such, I deem no further action is necessary.

The investigation revealed Sergeant Johnson had two BWVs related to this incident. Neither recording captured the full two-minute buffering prior to activation.

This issue was brought to the attention of Captain Mohammadi who advised it was addressed through the issuance of an Employee Comment Sheet and the generation of a SAI. The Commanding Officer of OCB and the Director of OO concurred with this action. As such, I deem no further action is necessary.

The investigation revealed Officers Garcia's BWVs did not capture two full minutes of buffering prior to activation.

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<sup>53</sup> Officer Lassak Page 7, Lines 6-13

<sup>54</sup> Officer Lassak Page 7, Lines 18-21

This issue was brought to the attention of Captain Mohammadi who advised it was best addressed through the issuance of an Employee Comment Sheet and the generation of a SAI. The Commanding Officer of OCB and the Director of OO concurred with this action. As such, I deem no further action is necessary.

The investigation revealed Officers Ornelas' BWVs did not capture two full minutes of buffering prior to activation.

This issue was brought to the attention of Captain Mohammadi who advised it was best addressed through the issuance of an Employee Comment Sheet and the generation of a SAI. The Commanding Officer of OCB and the Director of OO concurred with this action. As such, I deem no further action is necessary.

The investigation revealed Officer Grant's BWV began on an unrelated traffic stop and on that previous incident, did not capture two full minutes of buffering prior to activation.

This issue was brought to the attention of Captain Mohammadi who advised it was addressed through the issuance of an Employee Comment Sheet and the generation of a SAI. The Commanding Officer of OCB and the Director of OO concurred with this action. As such, I deem no further action is necessary.

The investigation revealed Officer Tuason had three BWVs related to the incident. His second and third recording did not capture two full minutes of buffering prior to activation.

This issue was brought to the attention of Captain Mohammadi who advised it was addressed through the issuance of an Employee Comment Sheet and the generation of a SAI. The Commanding Officer of OCB and the Director of OO concurred with this action. As such, I deem no further action is necessary.

The investigation revealed Officer Cunningham had two BWVs related to the incident. Neither captured two full minutes of buffering prior to activation.

This issue was brought to the attention of Captain Mohammadi who advised it was addressed through informal counseling. The Commanding Officer of OCB and the Director of OO concurred with this action. As such, I deem no further action is necessary.

The investigation revealed Officer Lassak BWVs did not have two full minutes of buffering prior to activation.

This issue was brought to the attention of Captain Mohammadi who advised it was addressed through informal counseling. The Commanding Officer of OCB and the Director of OO concurred with this action. As such, I deem no further action is necessary.

The Office of Operations conducted a random inspection of BWV's associated to Sergeants Tuailii, and Johnson, Officers Garcia, Ornelas, Grant, Tuason, Cunningham, and Lassak

### Audio/Video Recordings

**Digital In-Car Video System (DICVS)** – Newton Patrol Division police vehicles were equipped with DICVS.

Officers Garcia and Cunningham's DICVS captured their code three response. It did not capture the use of force. The rear camera was activated and captured Mullen as he was seated in the back of the police vehicle and Mullen's exit of the police vehicle with the assistance of LAFD personnel.

Officers Grant and Tuason's DICVS captured their code three response. It also captured the continuation of the use of force as Officers Garcia, Cunningham, and Lassak carried Mullen to Officer Garcia's and Cunningham's police vehicle. The DICVS also captured Officers Garcia, Cunningham, and Lassak placing Mullen onto the ground and also place Mullen inside Officer Garcia and Cunningham's police vehicle.

**Body Worn Video (BWV)** – Newton Patrol Division officers at scene were equipped with BWV at the time of the incident.

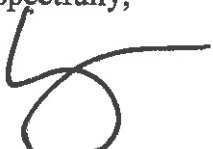
Officer Garcia's and Officer Cunningham's BWV captured the non-lethal use of force.

Sergeant Tuailii's along with Officers Lassak and Vogel's BWV captured a portion of the non-lethal use of force.

**Outside Video Surveillance** – Investigators from FID responded to the Mobile Gas Station, which was the location of the original radio call with a Technical Investigation Division Electronics Surveillance Specialist to recover surveillance video. The recovered surveillance video captured Mullen assaulting Angela M. on the interior of the convenience store and Mullen fleeing the location followed by Angela M.

Investigators from FID also responded to the So-Cal Tires & Wheels business and recovered surveillance video from their east parking lot camera. The recovered surveillance video captured Mullen fleeing from Angela M. prior to the arrival of Officers Garcia and Cunningham. Mullen is depicted entering the storage room through the yellow door where Officers Garcia and Cunningham eventually discovered him. The surveillance video captured Officers Garcia and Cunningham contact with Mullen and a portion of the subsequent use of force.

Respectfully,



MICHEL R. MOORE  
Chief of Police

Date: 5-27-20